In 8/6/1989

gist

A quick reference aid on U.S. foreign relations
Not a comprehensive policy statement
Bureau of Public Affairs • Department of State

International Investment Policy June 1989

Background: The best way to foster a liberal market-oriented international investment system is by widespread adherence to the principles of:

- National and most-favored-nation treatment for foreign investors; and

- Protection of investors' financial, physical, and intellectual property under international legal principles and multilateral conventions.

The national treatment principle means that foreign investors should be treated no less favorably in like situations than domestic enterprises. Most-favored-nation treatment means that foreign investors from one nation should be accorded treatment no less favorable than the most favorable treatment granted to foreign investors from any other nation. Exceptions should be limited to those required to protect national security and related interests.

Protection of investors' property is also necessary to maintaining a properly functioning international investment system. Under international law, expropriation of investment is considered appropriate only if it is done for a public purpose, is accomplished under due process of law, is nondiscriminatory, does not violate previous contractual arrangements, and is accompanied by prompt, adequate, and effective compensation. Intellectual property also requires protection: international recognition of patents, trademarks, copyrights, and other proprietary rights to technology is needed to reward innovation and foster investment flows.

US policy: In September 1983, President Reagan released the Administration's "Statement on International Investment Policy." It recognizes the vital contribution of foreign direct investment flows to economic growth and development and the benefit to home and host country alike. (For official US accounts, foreign direct investment in the US is defined as ownership by an organization or person of 10% or more of the voting stock of a US-incorporated firm.) A central feature of our policy is that market forces should determine direct investment flows. Freely functioning markets ensure the most efficient and productive allocation of international investment capital. In this context, the US opposes measures by other governments that interfere with investment flows.

The US welcomes foreign investment in this country and extends to such investment the same nondiscriminatory treatment we seek for US investors abroad. An indication of the favorable US environment for investment is the fact that foreign direct investment has continued to grow and in 1987 approached $262 billion.

READEX FICHE best copy available

S 1.128:

US programs: The US works actively to promote a market-oriented international investment system, to strengthen adherence to nondiscriminatory treatment standards, and to reduce foreign governments' actions that impede or distort investment and related trade flows.

An important benchmark is the 1976 declaration and related decisions of the Organization for Economic Cooperation and Development (OECD), consisting of understandings on national treatment, incentives and disincentives, and guidelines for multinational enterprises.

In 1984, the OECD members strengthened another agreement liberalizing capital flows with respect to national treatment and right of establishment of foreign firms. The US seeks to strengthen these understandings and agreements and to encourage broader support for these principles by other countries.

The US also has a bilateral investment treaty program to facilitate investment in developing countries by establishing a bilateral framework of agreed standards in such key areas as treatment of investment, expropriation and compensation, transfers of funds, and dispute settlement. The US has negotiated and signed such treaties with 10 countries in Africa, Latin America, and Asia. In 1988 the Senate gave its advice and consent to the ratification of eight of these treaties. Negotiations are continuing with additional countries.

The US also has a number of modern Treaties of Friendship, Commerce, and Navigation that contain investment provisions on national and most-favored-nation treatment, expropriation, and transfers. US embassies abroad provide services and assistance to American investors and help ensure that their investments are treated in accordance with bilateral treaty obligations and international law.

The US is working in the new General Agreement on Tariffs and Trade (GATT) trade round--the Uruguay Round--to place discipline on the use of Trade Related Investment Measures. These government-imposed measures include local content, export, technology transfer, and similar requirements that distort trade and investment flows to the detriment of the US and the global economy.

Finally, both bilaterally and in various multilateral forums, our aim is to ensure high international standards of protection for intellectual property. For example, we are working to bring the trade-related aspects of intellectual property under GATT discipline and to promote international standards for the protection of biotechnology, computer software, and semiconductor chips.

Harriet Culley, Editor (202) 647-1208